

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KEVIN LaFERNEY, #1498939

§

VS.

§

CIVIL ACTION NO. 2:13cv806

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

The above-entitled and numbered petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was heretofore referred to United States Magistrate Judge Roy S. Payne. The Report and Recommendation (“R&R”) of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Petitioner has filed objections, which includes a motion for rehearing (docket entries #10, 11).

Having made a *de novo* review of the objections raised by Petitioner to the R&R, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner’s objections are without merit. Rather than addressing the specific findings of the Magistrate Judge, which address in detail Petitioner’s allegations and argument in favor of equitable tolling in his case, Petitioner essentially repeats the same allegations and arguments in his objections. He has offered nothing to contradict the Magistrate Judge’s conclusions, but simply claims to have “been pursuing his rights diligently.” Objections at 1. As the Magistrate Judge concluded, however, Petitioner’s initial state habeas application was not properly filed and inadequate to toll the federal statute of limitations applicable here; he then delayed for 19 months before filing a second state habeas

application, exceeding the federal statute of limitations by far. His contentions of being unskilled in law and having trouble researching his case, as well as his apparent difficulty in obtaining certain records from his own defense counsel, do not satisfy the requirements that he has both been pursuing his rights diligently and that “extraordinary circumstances” stood in his way. *Holland v. Florida*, 560 U.S. 631, 130 S. Ct. 2549, 2563, 177 L. Ed. 2d 130 (2010). He has offered nothing else. Therefore, his objection is overruled.

Having completed a *de novo* review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts same as the findings and conclusions of the Court. It is therefore

ORDERED that Petitioner’s objections are **OVERRULED** and his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and the case is **DISMISSED WITH PREJUDICE**. His motion for rehearing, contained within the objections (docket entries #10, 11), is **DENIED**. A certificate of appealability is **DENIED**. Any motion not previously ruled on is **DENIED**.

So ORDERED and SIGNED this 6th day of January, 2014.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE